

## Robinson Low

Please accept these comments on the Preliminary Draft Language for the Shoreline Management Act Rulemaking informal comment period from Washington Conservation Action.

If you have any questions or concerns, please reach out via email. Thank you.

August 15th, 2025

State of Washington Department of Ecology  
Shorelands and Environmental Assistance Program  
300 Desmond Drive  
Lacey, Washington 98503

Dear Rebecca Rothwell, Misty Blair, and Charlotte Dohrn:

Subject: Comments on the Shoreline Management Act Preliminary Draft Language

Sent via email to: [SMARulemaking@ecy.wa.gov](mailto:SMARulemaking@ecy.wa.gov)

Thank you for the opportunity to provide input on the preliminary draft language to the Shoreline Management Act (SMA) chapters 73-18, 173-20, 173-22, 173-26, and 173-27. Washington Conservation Action Education Fund (WCA) is a 501(c)(3) organization founded in 1967 as Washington Environmental Council. Our mission is to develop, advocate for, and defend policies that ensure environmental progress and justice by centering and amplifying the voices of the most impacted communities. We are committed to clean water and healthy habitats for all Washington State shorelines.

WCA has a history of supporting and advocating for robust protection for the shorelines of our state for the benefit of salmon, shellfish, and humans alike. We helped support the passage, development, and implementation on the Shoreline Management Act in 1972 and continue to engage in issues relating to the protection and restoration of our shorelines.

This rulemaking focuses on changes to SMA language that will clearly direct local jurisdictions to plan for sea level rise and the increase in storm severity in their next Shoreline Masters Program (SMP) update. We would like to see Ecology make significant progress to ensure local jurisdictions are adequately planning for sea level rise and increased storm severity, enforcing their SMPs thoroughly, and at a minimum achieving no net loss of ecological function.

#### **1. Planning for sea level rise and increased storm severity**

With the passing of HB 1181 in 2023, Washington State has begun preparing for sea level rise and other climate related impacts. Specifically, Ecology has been tasked with adding requirements for local governments to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and the environment. These updates must be clear and direct enough for there to be consistency across jurisdictions so local SMPs are aligned in how they manage their shorelines. These updates must also be flexible enough for local jurisdictions to make amendments to their SMPs based on accurate local data regarding sea level rise projections, community priorities on habitat and infrastructure protections, and changing projections based on best available data in the coming years.

This rulemaking must hold local jurisdictions accountable to protect and restore shorelines in the face of sea level rise and increased storm severity. It is critical that Ecology keep strong, clear, and direct language in the preliminary draft so that local jurisdictions can effectively manage the 28,000 miles of shorelines in Washington State. Communities will experience greater frequency and severity of coastal and riverine tidal flooding, increased erosion, and more repetitive and long-lasting damages to infrastructure, community health, and habitats. We urge Ecology to keep clear definitions, strong language, and the use of best available science, data, and projections as well as add the additional language identified in this comment letter.

#### Standardized Definitions of Shoreline areas and Affected Tribes.

In the preliminary draft, Ecology has proposed local jurisdictions must designate clear zones within the shoreline jurisdiction based on the expected impact related to sea level rise and increased storm severity. These designations include:

##### *The Sea Level Rise Hazard Area*

The Sea Level Rise Hazard Area (SLRHA) designation is critical for local jurisdictions to define and enforce within their boundaries. These areas will need to be regulated differently due to their high vulnerability to the rising sea level. Local jurisdictions will need to ensure developments in the SLRHA are fit for not only the current climate impacts near the shoreline, but for the lifespan of the development as climate impacts change. What is critical for this to be a consistently, and effectively managed area, is for local jurisdictions to use the best available science and predictions for sea level rise.

WCA strongly supports the directive for local jurisdictions to designate specific Sea Level Rise Hazard Areas. In addition, we strongly support the addition of WAC 173-27-185 which outlines additional application requirements for projects that fall within the SLRHA. Developments in these areas require a more thorough and intentional review before being accepted. We appreciate the requirement for applicants to demonstrate they are selecting the most precautionary adaptation alternative that is feasible and applicable rather than simply choosing the cheapest option. We also appreciate the addition of 173-27-285(3)(d) which directs applicants to show impacts from inundation and a 20-year high-water event.

To further define and add specificity to this designated area, WCA suggests adding language to the definition proposed in WAC 173-26-020 to include the combined impacts of sea level rise, flooding, erosion, groundwater rise, and saltwater intrusion/inundation. These impacts will exacerbate each other, for instance, when there is a strong winter storm that results in flooding in addition to the groundwater rise due to general sea level rise, which should be explicitly mentioned in the definition.

Additionally, WCA has concerns with WAC 173-27-185(3)(b). While it requires applicants to provide local governments with the “information necessary to screen the project for potential sea level rise impacts.” it does not outline what constitutes “low risk”. If a local government deems a project is “low risk” then the statements and information required in 173-27-185(3)(c) through (i) “do not apply”. Without any constraints or guidance on how a local government can interpret a project to be “low risk,” there will not be consistency across jurisdictions on what projects are “low risk” and local governments can claim a project is low risk to avoid a more thorough permit application process. With no oversight on this by having local governments report approved “low risk” projects to Ecology, this is a potential gap in regulation that could result in greater

development impacts to shoreline and nearshore environments critical to salmon, shellfish, and forage fish habitats. We suggest either adding stipulations where local jurisdictions must outline why a project is “low risk” or include approved “low risk” applications to the exemptions report local jurisdictions must send to Ecology.

### *The Future Tidal Inundation Area*

The designation of the Future Tidal Inundation Area (FTIA) is also critically important to limit development that could become compromised during its lifetime, leach hazardous chemicals and materials into shoreline and nearshore habitats, and exacerbate the coastal squeeze as nearshore and shoreline habitats migrate landward as the sea level rises. WCA strongly supports the addition of the FTIA and the directive to use projections of at least the intermediate scenario or higher by either 2100 or 70 years from the next periodic review. Ideally, local jurisdictions will plan for the worst-case scenario, but ensuring they *at least* use the intermediate sea level rise scenario is a good first step. Additionally, we support the clarity of WAC 173-26-246(8)(j) which sets constraints on developments in areas that overlap with the FTIA and allows local jurisdictions to have more precautionary standards than the minimum defined in WAC 173-26-020.

We believe, however, the definition and regulations around the FTIA are lacking the additional impacts of groundwater rise which will occur alongside sea level rise. The current language around FTIAs is related to flooding from daily or yearly high tides but does not account for areas that will become inundated through the rising water table and groundwater/saltwater intrusion. These areas may include areas landward of wetlands, estuaries, and other low-lying areas and can cause significant impacts to the build infrastructure and exacerbate the coastal squeeze of shoreline habitats. WCA suggests changing the title of this definition to “Future Tidal *and* Groundwater Inundation Areas” and adding language to the definition that describes the phenomenon of a rising water table and subsequent groundwater inundation. These areas must be identified, and impacts must be planned for through either mitigation or adaptation. Future groundwater inundation areas could expose septic tanks to the water table, impacting aquifers and freshwater that humans and wildlife including salmon and shellfish rely on.

### *Affected Tribes*

The addition of WAC 173-26-221(1) Archaeological and cultural resources is a much-needed section that should continue to be refined in consultation with Tribes of Washington State. WCA supports the language added to ensure the protection of archaeological and culturally important sites and resources so long as these sites are designated and managed appropriately in consultation with local Tribes. It is important to acknowledge that Tribes are co-managers of resources and therefore must be involved in the resource-related decision-making and management of shorelines alongside state agencies and local jurisdictions. We do, however, have concerns about how local jurisdictions will interpret “affected Tribes”. Proposed developments within shoreline jurisdictions may have wide ranging impacts that affect not only the nearest Tribe but Tribes across the region. Bulkheads and other hard shoreline armoring have impacts to sediment transport and nearshore habitats that support forage fish populations which in turn support salmon populations across the region. Salmon are a Treaty-protected resource; therefore, actions that affect salmon populations and viability also affect Tribes that harvest those salmon. We suggest Ecology develop more specific language to refine how

local jurisdictions can interpret “affected Tribes”. We urge Ecology to collaborate with the individual Tribes of Washington State and Tribal organizations to develop an agreed upon definition of “affected Tribes” and adding it to WAC 173-26-020.

### Sea Level Rise Vulnerability Assessments

In the preliminary draft, Ecology has proposed that local jurisdictions who must plan for sea level rise in their SMPs must also conduct, update, or use an existing sea level rise vulnerability assessment to inform SMP provisions. WAC 173-26-246(6)(b)(ii) through (iv) provides additional context and clarity on the purpose and content required of sea level rise vulnerability assessments. WCA strongly supports these additions and the requirement for the assessments to be either updated or conducted prior to the next periodic review cycle. This timeline is necessary for local jurisdictions to effectively manage their shorelines in the coming years as the impacts of sea level rise and increased storm severity are starting to be seen. It is also important that these vulnerability assessments to not only assess vulnerability of the built infrastructure but also potential impacts to shoreline ecological function and existing shoreline habitats. This is critical for local jurisdictions to do to identify and mitigate or adapt current and future developments in the area to minimize the coastal squeeze and degradation of shoreline ecological functions. It’s also critically important for local jurisdictions to describe how current built infrastructure may exacerbate the impacts of sea level rise and increased storm severity to nearby or adjacent infrastructure and ecosystems. This language, and language found in WAC 173-26-201 that requires local jurisdictions to use current, accurate, and complete scientific information, is strongly supported by WCA. This language must be present in the final (CR-102) proposed language.

#### **2. At a minimum, achieving no net loss of ecological function**

Washington’s shorelines, along with wetlands, forests, and streams, have been declining over the years. We have witnessed a decrease in acreage and functionality of the remaining extent of these ecosystems due to stressors stemming from the expansion of development. Despite focused efforts to achieve no net loss, Washington’s shoreline ecosystem functions continue to worsen in many areas ([Puget Sound Partnership Vital Signs](#)). This is an opportunity for Ecology to begin helping local jurisdictions to more effectively achieve no net loss of ecological function within the shoreline jurisdiction and in some instances, create a net gain of ecological function in shoreline ecosystems. A Washington State Department of Fish and Wildlife (WDFW) published report funded by the legislature to further explore options for a net gain program or how to evolve from no net loss to a net gain framework identified SMA as a critical piece to net gain’s success. WCA is committed to seeing net gains in ecological functionality to support salmon, shellfish, orcas, and to uphold Tribal Treaty rights.

### Protection of Critical Areas and Shoreline Ecological Function

Ecology has proposed the addition of a new section WAC 173-26-226 Protection of critical areas and shoreline ecological functions. WCA is in strong support of this new section. It acts as the environmental backbone for shoreline regulation by ensuring uses and modifications align with basic SMA principles of protecting, maintaining, and restoring shoreline ecological function. Strong language throughout this section referring to the use of best available science is important so that every permit decision is grounded in ecosystem-wide

processes and long-term sustainability of the shoreline area in the face of sea level rise.

WCA urges Ecology to use “shall” in place of “should” and the use of “should” in place of “may” throughout this language update to strengthen provisions that work towards the protection and restoration of critical areas and shoreline ecological function. This, along with the definition of “should” in WAC 173-26-020, creates a system to hold local jurisdictions accountable for decisions made under provisions with “shall” and “should”. WCA strongly supports this definition and its use throughout the preliminary language.

While we support much of the additions to WAC 173-26-226, we believe that no net loss will need to be achieved in the face of sea level rise and other climate-related impacts. As sea level rises towards the built infrastructure in the shoreline area, important nearshore and shoreline habitats will need to migrate landward. If there are structures impeding this migration there will be nowhere for these habitats to move and therefore, we will lose shoreline ecological function. As a basic tenant of SMA, no net loss of shoreline ecological function must be achieved, and both permitted and unpermitted structures may not result in a loss of ecological functionality. For example, one sentence found in WAC 173-26-226(2)(a)(ii) *“Natural and climate change-driven modifications are outside the scope and purview of the master program and cannot be subject to the shoreline ecological protection requirement or the master program no net loss of shoreline ecological function principle. These factors should be considered as part of the master program planning related to sea level rise, frequently flooded areas, geologically hazardous areas, and channel migration zones.”* **should be removed entirely.** Natural and climate change-driven modifications are within the scope of masters programs and must be addressed in the shoreline ecological protection requirement and the no net loss of ecological function principle. This would mean that impacts of sea level rise and other climate-related impacts must be addressed in all subsections of WAC 173-26-226(2). Subsections including WAC 173-26-226(b) -- Principles, (c) - General Standards, (d) -- Shoreline buffers, (e) -- Shoreline vegetation conservation, (f)(iii) -- Water quality, stormwater, and nonpoint pollution prevention standards, and WAC 173-26-231 – Shoreline modifications should include language directing local jurisdictions to plan for *“increased storm intensity and overland runoff, compound coastal flooding from sea level rise, elevated high tides, storm and wind waves, and elevated groundwater levels as identified through locally completed vulnerability assessments and statewide data provided by federal and state resource agencies, including Ecology.”* as it relates to and affects each subsection.

#### Mitigation Sequencing and a Minimum of No Net Loss

The Mitigation Sequencing can work to achieve no net loss, but only if it is properly applied by local jurisdictions and enforced by Ecology. This begins with the strongest language in SMA directing local jurisdictions to correctly apply the mitigation sequencing to, at a minimum, achieve no net loss of ecological function. WAC 173-26-226(1)(d)(iv) reads **“Alterations to wetlands. Masters program provision addressing alteration to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation sequence defined in WAC 173-26-020(11).”**. In the currently proposed preliminary draft, there is not definition of “mitigation sequence” or “mitigation sequencing”. Local jurisdictions cannot follow direct guidelines to follow-through with the mitigation sequencing if it is not an explicitly defined term in WAC 173-26-020. We urge Ecology to review this section and explicitly define “mitigation sequence” in this chapter.

Additions to WAC 173-26-226 to provide local jurisdictions more clarity and direction when developing



principles and standards for the protection and restoration of critical areas in the shoreline jurisdiction are much needed and strongly supported by WCA. There are still areas where we would like to see additional language to increase protections for critical areas. There must be emphasis on avoidance in WAC 173-26-226(1)(d)(ii), particularly for Category I and II wetlands where impacts can only be approved as outlined in Ecology's guidance for local wetland regulation.

Throughout the preliminary language, Ecology has added language reaffirming the requirement for local jurisdictions to achieve no net loss of ecological function. It is critically important to highlight this requirement throughout any new language added to address sea level rise and other climate related impacts. At times, Ecology states "these guidelines are designed to ensure, **at a minimum, no net loss of ecological function...**" (WAC 173-26-226(2)(b)(ii)). We strongly support the addition of "at a minimum" when referring to achieving, demonstrating, or ensuring no net loss of ecological function. This allows for local jurisdictions to go above and beyond the current standard of no net loss and achieve ecological gains within shoreline areas. WCA believes that a net gain of ecological function approach is necessary to effectively protect and enhance shoreline ecosystems for salmon, shellfish, and to uphold Tribal Treaty rights. In a recently published report by Washington State Department of Fish and Wildlife ([WDFW, 2025](#)), the authors identify SMA as a critical piece to both upholding no net loss standards and for any future net gain or ecological improvement program. Language should reflect the strength SMA has to direct local jurisdictions to achieve ecological gains by using the phrase "...at a minimum, no net loss of ecological function..." when directing local jurisdictions to ensure, demonstrate, or achieve no net loss. We suggest using this phrase in all instances of no net loss in WAC 173-26-226.

### 3. SMA compliance and enforcement at the local level

Clear and strong language in SMA is an important first step in protecting and restoring our shorelines. Without adequate enforcement measures and checks to ensure local jurisdictions are compliant with SMA means our shorelines will continue to face challenges due to development and impacts from climate change. SMA must provide local jurisdictions with clear procedures to follow, strengthen accountability measures, and align local and state actions to protect Washington's shorelines.

The preliminary draft language proposed by Ecology tackles many of these pieces which were lacking before. We appreciate and support the additions Ecology has proposed in WAC 173-27-265 Notice of correction – this provision allows the department of Ecology to issue a notice of correction to responsible parties if local jurisdiction cannot, or do not, enforce compliance of their SMPs. This is important to keep in proposed language because it work to bolster collaboration between Ecology and local jurisdiction on the enforcement of SMPs and gives Ecology the authority to act when local jurisdiction will not. WAC 173-27-295 Permit rescission is another critically important provision to keep in the final SMA language proposal. This adds clear and actionable mechanisms for either Ecology or the local jurisdiction to revoke a permit if it is not in compliance with SMA or the local SMP. Finally, WAC 173-27-320, which creates a pathway to hold violators financially responsible for damages and restoring any ecological impacts resulting from unpermitted actions is extremely important to uphold SMA's standard of no net loss of ecological function. WCA is a strong supporter of these additions and urges Ecology to keep these provisions in the final proposed SMA language.

#### Documentation and Reporting of Unpermitted Changes and Exemptions

Another addition Ecology has proposed is the documentation and reporting of all authorizations within the shoreline jurisdiction. WAC 173-26-090(2)(e) provides local jurisdictions with clear direction to *“document all authorizations, regardless of whether a shoreline permit or exemption is required, within shoreline jurisdiction.”* This alone is an important provision to hold local jurisdictions accountable to the projects they are approving along a shoreline of the state. Furthermore, the language used which identifies this as a growing need as sea level rise will change and adaptive measure will need to be taken by local jurisdictions to prevent exacerbated damages to infrastructure and impacts to ecological function. WAC 173-26-090(2)(e)(i) states *“This information shall be shared with ecology to facilitate a state-led effort to study SMP implementation.”* and further that *“local governments shall use the department’s system as a means for documenting information on shoreline exemptions and permits within shoreline jurisdiction.”* These additional provisions are crucially important to allow Ecology to ensure that local jurisdictions are complying with SMA and they are enforcing their SMPs correctly. Finally, WAC 173-26-191(2)(a)(iii)(D) states *“Master programs shall identify a mechanism for documenting all authorizations in shoreline jurisdiction regardless of whether a shoreline permit or exemption from the substantial development permit process is required.”* It is important for local jurisdictions to create a comprehensive document of all authorizations within their shoreline jurisdiction to ensure no net loss of ecological function. WCA is a strong supporter of these additional provisions and strongly urge Ecology to keep these in the final SMA proposed language.

We do, however, urge Ecology to add an additional provision to WAC 173-26-191 which outlines a similar process of documentation and reporting regarding **unpermitted** actions. Multiple recent studies over the past 5 years have found a staggering amount of unpermitted bulkhead and hard armoring structures being erected ([Herrera, 2024](#); [Friends of the San Juans, 2022](#); [Kinney et al., 2015](#)). Even if local jurisdictions are limiting the amount of permitted shoreline armoring to achieve no net loss of ecological function, they aren’t truly achieving that due to unpermitted actions that impact shoreline functionality. Local jurisdictions should be required to take account of their shoreline jurisdiction every 5 years to assess whether or not there have been any unpermitted actions. Without the full knowledge of both permitted and unpermitted actions along their shorelines, they cannot accurately describe if they are achieving no net loss of ecological function and upholding SMA standards. These reports documented by local jurisdictions should then be reported to Ecology so the department has a clear picture of unpermitted impacts to shorelines of the state and so that Ecology can support local jurisdictions in requiring parties to correct their unpermitted actions.

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We thank you for the opportunity to comment on the preliminary draft of SMA chapters 173-26 and 173-27 during this rulemaking process. We appreciate the transparency and openness Ecology has conducted this informal comment period and look forward to working more with the department as they develop final proposed language in 2026. Please feel free to reach out with any questions you have regarding this comment letter.

Sincerely,

Robinson Low

Habitat Policy Senior Manager